

REMARKS

The Amendments

Claim 1 is amended to incorporate the substance of claim 8, which is accordingly canceled, and part of the substance of claim 9 (i.e., the titanium oxynitride or titanium nitride) recitation.

To the extent that the amendments avoid the prior art or for other reasons related to patentability, competitors are warned that the amendments are not intended to and do not limit the scope of equivalents which may be asserted on subject matter outside the literal scope of any patented claims but not anticipated or rendered obvious by the prior art or otherwise unpatentable to applicants. Applicants reserve the right to file one or more continuing and/or divisional applications directed to any subject matter disclosed in the application which has been canceled by any of the above amendments.

The Rejection under 35 U.S.C. §102

The rejection of claims 1-20 under 35 U.S.C. §102, as being anticipated by Schoen (US Publication No. 2002/0192448; now issued as U.S. Patent No. 6,884,289) is respectfully traversed.

Schoen does not disclose or suggest an interference pigment having: "(D) an absorbent layer having a layer thickness of 1 – 100 nm, which comprises at least one metal oxide, sulfide, telluride, selenide, lanthanide, phosphate, or actinide, or a mixture of two or more of the above, a titanium oxynitride or titanium nitride." The absorbent in Schoen is a covering of absorbent pigment particles having a particle size of 1-500 nm. Although Schoen refers to this covering as a "layer," this term clearly has a different meaning than the "layer" term in the instant claims. Based on the disclosure and the examples, it would be clear to one

of ordinary skill in the art that the absorbent "layer" of the instant claims is a relatively homogenous layer rather than a collection of particles. See, e.g., the use of wet chemical methods in the examples which provide a solution to the pigment which is then dried. To one of ordinary skill in the art, this clearly provides a true layer, distinct from a "covering of absorbent pigment particles," as disclosed in Schoen.

The distinction between the structures will also be reflected in the properties of the pigments having these distinct absorbent layers. The absorbent layer according to the claimed invention will exhibit an interference color at a specular angle. It will also provide an interference color and an absorption color of the absorbent layer outside the specular angle. See, e.g., paragraph [0009] on page 2 of the disclosure. The pigment particles layer of Schoen will each individually reflect light and, thus, will give differing reflection properties.

For the above reasons, applicants respectfully submit that the absorbent layer according to the claimed invention is distinct from the absorbent particles covering of Schoen. Thus, there is no anticipation and the rejection under 35 U.S.C. §102 should be withdrawn. Further, the claimed invention is not rendered obvious by Schoen. There would be no motivation to replace the absorbent particles covering of Schoen with a non-particle absorbent layer since the particles feature is a principal characterizing feature of the Schoen invention.

The Provisional Obviousness-type Double Patenting Rejection

The obviousness-type double patenting rejection of claims 1-20 over claims 1-11 of copending Ser. No. 10/128,521 is respectfully traversed.

It is noted that this application has issued as U.S. Patent No. 6,884,289. The patent contains claims 1-16 which have differences from the original claims published in

2002/0192448.

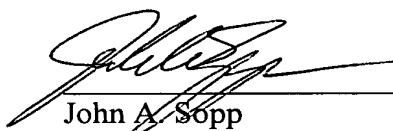
The distinctions made above in traversing the 35 U.S.C. §102 rejection apply equally here. Clearly, if the whole disclosure of the reference does not disclose or suggest the currently claimed invention, the claims of the patent supported by such disclosure do not render the current claims obvious variants. As discussed above, the absorbent layer (D) of the instant claims is distinct and not obvious from the absorbent pigment particles covering of the patent.

Accordingly, the obviousness-type double patenting rejection should be withdrawn.

It is submitted that the claims are in condition for allowance. However, the Examiner is kindly invited to contact the undersigned to discuss any unresolved matters.

The Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,



John A. Sopp
Registration No. 33,103
Attorney for Applicants

MILLEN, WHITE, ZELANO
& BRANIGAN, P.C.
Arlington Courthouse Plaza I
2200 Clarendon Blvd. Suite 1400
Arlington, Virginia 22201
Telephone: (703)243-6333
Facsimile: (703) 243-6410
Attorney Docket No.: MERCK-2862

Date: October 6, 2005